

Feb-24-2005 03:45pm From-

T-311 P.001/004 F-718



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Facsimile Transmission

Date: February 24, 2005

| RECIPIENT | COMPANY | PHONE NO. | FAX NO. |
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FROM: Christopher F. Robertson

PHONE:

RE: REPLY FAX NO.: (617) 946-4801

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Feb-24-2005 09:46pm From-

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February 24, 2004

BY FAX AND REGULAR MAIL

Scott A. Silverman, Esq.
Gadsby Hannah LLP
225 Franklin Street
Boston, MA 02210

Re: **ITV Direct, Inc. v. Healthy Solutions, LLC, et al**
U.S.D.C. C.A. No. 04-cv-10421-JLT

Dear Mr. Silverman:

I am writing to respond to your letter to me dated February 18, 2005. As a preliminary matter, I believe that the parties are still awaiting a ruling from Judge O'Toole concerning Cappseals' motion to amend the Preliminary Injunction Order in the FTC litigation. In the event that Judge O'Toole rules that production of the confidential report prepared by ITV Direct's accountants is warranted, we are prepared to produce the report provided to the FTC, as well as the underlying documentation compiled by the company's accountants to prepare that data. That certified report confirms that ITV Direct lost over \$2.5 million in connection with the Supreme Greens promotion. These losses were the direct result of the fraudulent representations made by Alejandro Guerrero to ITV Direct and its principals.

By way of supplementation of ITV Direct's damages disclosures in this case, the claims that ITV Direct has brought against Healthy Solutions, LLC, Health Solutions, Inc. and the individual defendants (collectively "Healthy Solutions") include claims for breach of contract, conversion, misrepresentation and fraud in the inducement, misrepresentation and fraud, indemnification and violation of Chapter 93A.

With respect to the breach of contract and fraud claims, ITV Direct believes that its damages include the certified \$2.5 million in losses from the Supreme Greens promotion, which includes substantial media expenses and other costs associated with the program, as detailed in the audited financial report provided to the FTC. In addition, based on the sales data confirmed in the audit and the reduction in sales due to Healthy Solutions' breach of contract and fraud, ITV Direct lost an additional several million dollars in revenues from future sales had the promotion continued. For example, a simple comparison of revenue data from March 2004, when the program was running in wide release, to May 2004 when airing of the program was

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reduced and eventually stopped altogether, shows a reduction in revenue in excess of \$1.4 million per month. Even a conservative estimate of expected revenues from the program would result in damages to ITV Direct in the several millions of dollars. This damage is further compounded when typical rates of continuity sales are considered. In total, therefore, using an extremely conservative estimate, ITV Direct's operating and business damages from Healthy Solution's breach of contract and fraud is in excess of \$4 million.

In addition to the above, another component of ITV Direct's damages against Healthy Solutions is the lost sales of the Supreme Greens product through the Internet. Healthy Solutions breached its agreement to assign the web domain to ITV Direct. During that period, based upon published data, the web site received over 55,000 hits per month. These sales should have been routed to ITV Direct, but were instead routed to Healthy Solutions. Although we have requested specific data from Healthy Solutions regarding the amount of web sales, that information has not yet been provided. However, based on our review of some of the data provided by Healthy Solutions, as well as our estimates of typical rates of sales through the Internet, ITV Direct believes that these sales total at least several hundred thousand dollars. In the event we obtain more specific data regarding those sales from Healthy Solutions, we will supplement this disclosure accordingly.

As to the claim for indemnification, ITV Direct is currently in the midst of active litigation with the Federal Trade Commission over the health claims made by Mr. Guerrero in the Supreme Greens infomercial. As we have reported in the past, the FTC has asserted that it is entitled to recover on behalf of consumers the entire amount of revenue from the sales of Supreme Greens through the infomercial. This revenue, again based upon the audited report provided to the FTC, exceeds \$14 million. In addition to this revenue, ITV Direct has expended substantial attorneys fees in connection with defending the FTC investigation and action, as well as inquiries by the FDA. These fees continue to climb, but already exceed several hundred thousand dollars.

Finally, ITV Direct has brought a claim under M.G.L. Chapter 93A, which provides for the recovery of multiple damages, interest and attorneys fees. Given the egregiousness of Mr. Guerrero's misrepresentations, including the misrepresentation that he was a doctor and OMD in violation of California criminal statutes, there appears to be little doubt that Healthy Solutions' conduct in this case amounted to a willful false and deceptive business practice, requiring at least double damages, interest and attorneys' fees. The attorneys' fees alone in this case, which include litigating the case on two coasts, are also in the hundreds of thousands of dollars.

In response to the notice of deposition issued to ITV Direct, we can confirm that the witnesses for the company will be Donald Barrett and Wayne Callahan. Each witness is prepared to testify for half a day. As you know, Mr. Barrett is the President of the company and will testify as to the substantial business damage caused by Healthy Solutions' breach of contract and fraud, as well as the indemnification issues. Mr. Callahan, the company's accountant, will testify regarding the losses sustained by the company in connection with the Supreme Greens

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promotion, as well as the detailed financial information prepared by the company and audited by the independent auditing firm. As we discussed, neither of these witnesses is available on March 3, 2005, and I will be traveling out of state as well. Please provide alternative proposed dates and I will confirm with each witness their availability.

I trust this letter addresses the issues in your letter of February 18, 2005 and provides the supplementation contemplated by Judge Tauro's order. Please feel free to call me if you have any questions.

Very truly yours,

SEYFARTH SHAW LLP



Christopher F. Robertson

cc: Becky V. Christensen, Esq. (by mail)
Dustin F. Hecker, Esq. (by mail)